

April 4, 2002



Dear Senator:

I am writing to express the very deep concerns that this organization has with the investor provisions as they currently exist in the Bipartisan Trade Promotion Authority Act of 2001 (TPA), HR 3005. While we understand the need for foreign investors to be assured that their investments in other countries will be protected against expropriation, our concern is that the provisions, as they now stand, will prevent states and localities from being able to enforce public health and safety laws and land use controls.

Our concerns arise from some of the Chapter 11 claims being made under the North America Free Trade Agreement by foreign investors against the United States and other governments covered by the treaty. Under Chapter 11, a private foreign company may sue the federal government directly to seek compensation if the company believes that a state or local regulation has resulted in a taking. There have already been approximately \$2 billion in claims filed under Chapter 11 and we are concerned that the number of takings claims against state and local governments could skyrocket if foreign investor protections as they currently exist are included in HR 3005. These investor claims are decided by tribunals in closed session and are not subject to the legal precedents governing takings claims that have evolved over time in our judicial system.

In particular, we are troubled that a claim by a foreign company that a local government's regulation or zoning law constitutes a taking against the company will make it impossible for the locality to enforce that specific regulation or law against the company. Equally troubling, such an action would appear to favor foreign companies over domestic companies, which would in all likelihood have to comply with the local regulation or law.

We hope that the Senate will take a close look at the ramifications of the foreign investor provisions of the TPA to ensure that state and local laws designed to protect the public and public property remain enforceable against all parties. Congress has repeatedly rejected efforts in recent years to alter how takings claims are considered at the state and local level. We ask that you now reject this even more serious threat to local governments as you develop our nation's trade policy.

Sincerely,

Tom Halicki
Executive Director

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